

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT
3

4 SUMMARY ORDER
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6 THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL
7 REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS
8 OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS
9 OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A
10 RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL
11 OR RES JUDICATA.
12

13 At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the
14 Thurgood Marshall United States Courthouse, at Foley Square, in the City of New York, on the
15 17th day of September, two thousand and four.
16

17 PRESENT:

18 HON. JON O. NEWMAN,
19 HON. GUIDO CALABRESI,
20 HON. PETER W. HALL,
21 *Circuit Judges.*
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27 UNITED STATES OF AMERICA,
28 *Appellee,*
29

30 v.

No. 04-0820

31
32 WILLIAM FELDER,
33 *Defendant-Appellant.*
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38 For Defendant-Appellant:

SAM A. SCHMIDT, New York, NY.

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41 For Appellee:

RITA M. GLAVIN, Assistant United States
Attorney (David N. Kelley, United States Attorney,
Southern District of New York, *on the brief*, Celeste
L. Koeleveld, Assistant United States Attorney, *of*
counsel).

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2 Appeal from the United States District Court for the Southern District of New York
3 (Keenan, J.).
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8 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND**
9 **DECREED** that the judgment of the District Court is **AFFIRMED**.
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13 Defendant-Appellant William Felder appeals the judgment of the district court (Keenan,
14 J.) sentencing Felder to six months' imprisonment for participating in a bank fraud conspiracy. In
15 sentencing Felder, the district court, considering all relevant factors, refused to grant Felder's
16 request for a downward sentencing adjustment in light of his alleged minimal or minor role.
17 Felder claims error.

18 The determination of whether a defendant merits a downward adjustment for a mitigating
19 role in the offense is a highly fact-specific inquiry, which depends on, *inter alia*, the nature of the
20 defendant's relationship to other participants, the importance of his actions to the success of the
21 criminal effort, and his awareness of the nature and scope of the criminal venture. *See United*
22 *States v. Carpenter*, 252 F.3d 230, 234 (2d Cir. 2001). In addition, in order to obtain the
23 downward adjustment, a defendant must establish that his culpability is minor when considered in
24 relation to the "average participant in such a crime." *See United States v. Jeffers*, 329 F.3d 94,
25 103 (2d Cir. 2003) (internal citations omitted). We accept the district court's findings of fact
26 unless they are "clearly erroneous." *United States v. Franklyn*, 157 F.3d 90, 97 (2d Cir. 1998).

27 There is nothing in the record of this case that suggests error, let alone clear error, in the
28 district court's conclusion that Felder did not merit a downward adjustment; nor was there any

1 error of law in applying the appropriate standards as to whether any such adjustment would be
2 warranted.

3 The mandate in this case will be held pending the Supreme Court's decision in *United*
4 *States v. Booker*, No. 04-104, – S.Ct. –, 2004 WL 1713654 (Aug. 2, 2004), and *United States v.*
5 *Fanfan*, No. 04-105, – S. Ct. –, 2004 WL 1713655 (Aug. 2, 2004). Should any party believe there
6 is a need for the district court to exercise jurisdiction prior to the Supreme Court's decision, it
7 may file a motion seeking issuance of the mandate in whole or in part. Although any petition for
8 rehearing should be filed in the normal course pursuant to Rule 40 of the Federal Rules of
9 Appellate Procedure, the court will not reconsider those portions of its opinion that address the
10 defendant's sentence until after the Supreme Court's decision in *Booker* and *Fanfan*. In that
11 regard, the parties will have until fourteen days following the Supreme Court's decision to file
12 supplemental petitions for rehearing in light of *Booker* and *Fanfan*.

13 We have considered all of Defendant's claims and find them to be without merit. The
14 district court's judgment is therefore AFFIRMED.

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16 For the Court,
17 ROSEANN B. MACKECHNIE,
18 Clerk of the Court
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by: _____